

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Telecommunications Relay Services And Speech-to-Speech) CG Docket 03-123
Services for Individuals with Hearing and Speech Disabilities)

To: The Commission

***REPLY TO OPPOSITION TO REQUEST FOR CLARIFICATION OF
DECLARATORY RULING***

Hands On Video Relay Services, Inc. (“Hands On”),¹ by its counsel, replies to Sorenson Communications, Inc.’s August 3, 2006 Opposition to Hands On’s July 24, 2006 request for clarification of the Commission’s May 9, 2006 Declaratory Ruling, FCC 06-57, 71 FR 30818 (May 31, 2006).² Hands On sought clarification of the Declaratory Ruling to determine whether Sorenson Communications, Inc.’s (“Sorenson”) practice of intercepting VRS calls placed from the VP-100 device (and as admitted by Sorenson also the so-called

¹Hands On is a VRS provider, through contract, to AT&T Corp. (“AT&T”). Hands On is also a certified provider of VRS for the State of Washington’s Telecommunications Relay Service (“TRS”) program. Hands On has been providing VRS since July of 2002, originally in a developmental mode, since November of 2002 under contract with AT&T, and subsequently with the State of Washington as well as with AT&T.

²Not content to take one bite at the opposition apple, Sorenson filed both an ex parte letter on July __, 2006, mostly attempting to disparage the video quality of its various competitors, and its opposition pleading to which this reply is addressed. Hands On hesitates to waste the Commission’s time on the irrelevant issue (for purposes of the Declaratory Ruling) of which VRS provider has the better quality video relay service. Nevertheless, we note for whatever interest the Commission may have that Relay Review’s (www.relayreview.com) average rating for Sorenson as of the date hereof was 4 out of 5 with CAC, HOVRS, I711, IP-Relay, Sprint and Hamilton in that order all ranked above Sorenson in VRS service quality, with average ratings ranging from 4.73 to 4.02 out of 5.

VP-200 device) bound for completion by other providers violates the Declaratory Ruling's prohibition on degrading service on calls made through other providers.

Putting aside the misquotes³ and doubletalk,⁴ sprinkled throughout its Opposition, Sorenson posits a host of rationales to defend its practice of intercepting calls made from the VP-100 and VP-200 videophones, warning of possible quality issues if the user persists in making his call, asking the caller if he wants to continue with the call, with the default answer provided as "No." These rationales are: (1) an assertion that the message is accurate (Opposition at 2); (2) a suggestion that such intercept screens are commonplace in the Internet and even appear on the FCC's web site (Opposition at 4-5); (3) a representation that it has experience in receiving complaints of poor quality of service offered by other providers. Opposition at 4; (4) an assertion that the intercept does not block, degrade or delay VRS calls (Opposition at 3); (5) a claim that the intercept is not confusing or intimidating; and (6) an argument that the practice does not violate the Declaratory Ruling or Sorenson's obligations under Title II of the Communications Act . We address each of these arguments below.

³For example, Sorenson misquotes Hands On's Request at 6 and 7 as stating that its intercept screen is "'so intimidating and confusing' that it will 'dissuade VRS consumers from exercising their right to make a call through the provider of their choice.'" What Hands On said was that

⁴For example, Sorenson claims that users of its video-phones have "the unfettered ability to place calls to any VRS provider." That grandiose statement would be more accurate if it were phrased as "the unfettered ability to place calls through any VRS provider after disposing of an intercept message Sorenson interposes implying that the caller may receive degraded service if he persists in making the call."

Let's put this matter in perspective. Sorenson has become the largest VRS provider by pursuing a strategy whereby it gives away a very useful video-phone device and contractually and technically blocks the use of that device with potential competitors. Sorenson scrupulously followed this strategy. Whenever, a new VRS provider would come on line, Sorenson altered the programming of its video-phones to block access to the newcomer's VRS service. Sorenson vigorously opposed the Declaratory Ruling. It spent untold thousands of dollars of legal and lobbying time trying to convince the Commission not to issue the Declaratory Ruling. It submitted hundreds of pages in the record of that proceeding arguing that the Commission should refrain from interfering with its blocking of competitors' service. It sought to buy off the competition by seeking to enter into agreements to send them up to 100,000 minutes of VRS traffic a month. And when the handwriting was on the wall that the Commission intended to issue the Declaratory Ruling, what does Sorenson do. In a last ditch effort to head off the Declaratory Ruling, Sorenson announces it will stop blocking by July 1, 2006. And what does Sorenson do on July 1? It technically removes the block, and instead substitutes its intercept message with a thinly veiled message threatening poor service quality if users of its video-phones persist in choosing to make a call through a competitor. Sorenson's protestations that its intercept message does not violate the letter and spirit of the Declaratory Ruling should be viewed with this background firmly in mind.

Whether the intercept message is accurate is beside the point of whether it is an impermissible impediment to VRS users unfettered right to place calls through other VRS

providers. There certainly is nothing in the intercept's wording that is false. Its beyond dispute that Sorenson cannot vouch for the quality of a competitor's VRS service. In fact, the intercept's wording in this regard is so true as to be an insult to the intelligence of anyone receiving it. Does anyone think that GM can vouch for the quality of a Ford. Or that Pepsi can or would vouch for the quality of a Coke. How could Sorenson possibly think that VRS users would consider Sorenson responsible if the user received poor service from Hands On, or Hamilton or Sprint. Plainly a VRS user who chooses to contact with his VP-100 another VRS provider to place a call knows he is doing so since he must enter the Internet address of the provider, Hands On (www.hovrs.tv), Hamilton (www.hamiltonrelay.com), etc., he wants to use. Presumably the user therefore knows he is not using Sorenson to place the call and therefore understands that Sorenson is not responsible for the quality of the call. Thus there is no real purpose behind the intercept other than to place an impediment in the user's way to try to dissuade him to making a call through a competitor. Sorenson cannot be allowed to place such intercepts, no matter how true, in the path of VRS users who wish to use the services of a Sorenson competitor.

Likewise, the fact that Internet sites sometimes use pop-ups to tell consumers they are leaving one Internet site to go to another is irrelevant. In any event that analogy fails because callers placing a VRS call with a VP-100 through a provider other than Sorenson are not leaving Sorenson's web site because they were not on Sorenson's web site prior to making the call. Doubly irrelevant is Sorenson not so cute example of the FCC's site. Significantly, the FCC site no where asks the consumer if they really want to leave the FCC

site to go to a linked site, nor does the FCC site contain a default response of (“No”). Rather, Sorenson’s intercept message is instead modeled on the type of warning message one would receives in the event one was about to accidentally delete a document or make some other type of computer mistake. It is plainly designed to, and anecdotal evidence suggests that it does serve to, scare consumers from using other VRS providers to complete a call.

Sorenson’s suggestion that its experience led it to place the intercept in order to avoid complaints if consumers experience poor VRS quality from its competitors is the type of double-talk one would expect to hear from Joe Isuzu.⁵ Indeed, Sorenson’s “experience” must have been imagined, for its long standing practices belie the possibility it could actually have had any such “experience.” Just how could Sorenson have this “experience” when it previously blocked all VP-100 users from accessing competing VRS providers. No one could have complained of poor service from Sorenson’s competitors over its videophone devices since Sorenson outright denied consumers the possibility of obtaining any such service.

Ultimately Sorenson’s incantation that it does not block, degrade or delay VRS calls with it intercept message rings just as hollow. Opposition at 5-6. The simple fact is a VRS user attempts to place a call through a Sorenson competitor. Sorenson programs its video-phones not to send calls to the competing VRS provider’s network, but instead to send those

⁵In this same vein, reportedly a Sorenson executive falsely claimed to a consumer advocate that the Commission staff had approved its intercept message.

calls to the Sorenson server where Sorenson then interposes a screen, the default response to which, terminates the call. To suggest that call is not delayed strains even Sorenson's credibility.⁶ The call is in fact blocked until the VRS user figures out what Sorenson is saying and takes affirmative steps to continue the call.⁷ And, since calls made through competitors are subject to additional stages not imposed on calls made through Sorenson, it is clear that those calls are degraded.⁸

Moreover, Hands On has recently learned that Sorenson's intercept message has the capability to re-lock the VP-100 to only operate with Sorenson's service. Attached herewith is the declaration under penalty of perjury of Mr. Philip Jacob. That declaration explains

⁶Sorenson argues that interposing an intercept message that requires a user to de-select the default response that terminates the call does not serve to delay the call in question. Opposition at 6. Unless Sorenson has managed to make time stand still while the VRS consumer takes these actions -- the Commission can reject this claim as just more Sorenson double-talk.

⁷It is indeed ironic that Sorenson chose to interpose a text intercept disclaimer in the middle of a call rather than a lesser disruptive and more easily understood ASL video on its web site to advise VRS users of the obvious fact that it is not responsible for the VRS quality of a call made through a competitor. Why Sorenson chose not to put its message in the primary visual language of VRS users is unclear if its purpose was other than impeding calls to competitors. Sorenson could easily have put an ASL message on its web site advising its customers that it was implementing interoperability and that any complaints of inferior service should be directed to the specific provider used.

⁸Sorenson also seems to be saying it does not see the harm in delaying emergency calls made through competitors over its videophone devices, apparently content in the fact that the FCC requires it to notify users that there are inherent dangers in making emergency calls over VRS, and speculates that such a user would have previously made a call to another provider and thus would not likely receive the intercept message. Opposition at n.9. Hands On would not be so cavalier. It would be precisely in an emergency or urgent situation that a VRS user would be likely to need the ability to immediately go to another provider if delayed in receiving an answer from Sorenson. Moreover, Sorenson of all providers, knows that despite the FCC mandated warning, VRS users made emergency calls using VRS.

that in the event the consumer accepts the default response to terminate the call and indicates he does not want to see the Sorenson intercept message again, the VP-100 again blocks the consumer from accessing other providers. Mr. Jacob explains that when a consumer contacted Sorenson technical support with this problem, he was told there was no way to remedy the situation. Subsequently, Mr. Jacob believes that Sorenson's technical support may have a fix for this. However, it is plainly unreasonable that the intercept contains a hidden protocol to re-block the VP-100, requiring the consumer to then contact Sorenson technical support – at who knows how long a wait – to be walked through the fix. The intercept is plainly a violation of the Declaratory Ruling and the FCC must order Sorenson to stop using it.

Mr. Jacob further advises that as part of the modification in the VP-100 firmware, Sorenson places itself at the top of the customer's speed dial and does not allow the customer to remove the Sorenson speed dial entry. This practice plainly violates the principal of dialing parity and is thus another unreasonable practice on Sorenson's part. *See* FCC Rule Sections 51.205, 51.207, 51.209. Again, Sorenson is violating the principal of functional equivalence by imposing restrictions on calls made through other providers and by discriminating in its handling of those calls.

Although Sorenson denies that its intercept message is either confusing or intimidating, the ex parte comments of CSD and others⁹ aptly illustrate the contrary, as does

⁹*See* Ex Parte Submission of Communications Service for the Deaf, Inc. at 5-6 (August 3, 2006). *See also* Comments of Lawrence Brick (July 31, 2006).

anecdotal evidence. In fact this matter came up for discussion in a Yahoo group dedicated to resolving VRS 911 issues. There, an individual unaffiliated with any VRS provider, but who is very well acquainted with VRS stated to the group:

I'll use myself as an example. When I called to a different VRS provider with VP-100, and got that popup message, it did caught me off guard and did in fact stop me from making the VRS call to other VRS provider. I had to stop and think why I did that. I believe I was worried that Sorenson was "watching" me. Whether they did that or not, I don't know...but in the end I let my sheer resolve and intelligence to go ahead and make the VRS call via another VRS provider. The point I'm trying to say is this sentiment has been echoed quite a few times by folks who called me and expressed their concern. The interesting thing is I've been advised that my VRS calls to other VRS provider calls are NOT being monitored, but because of that popup message, I admit to skepticism to the non-monitoring claim. Finally one last point of difference, when I call a company and get "..quality assurance.." message, I do not feel any "alarm" setting off in me like this popup message did.

The clear impression any reasonable person gets when receiving the Sorenson intercept is that Sorenson, not the user, is in control of the video-phone (if not watching).¹⁰ That is plainly intimidating as the above quoted remarks show.

Finally, Sorenson asserts that its intercepts messages are not unlawful because it is not subject to the provisions of Title II of the Communications Act in general nor specifically of Section 201's prohibition on unreasonable practices and Section 202's prohibition on discrimination. As Sorenson notes, Hands On has previously argued that VRS is subject to Title II regulation. *See* Opposition at . Apparently Sorenson believes it is

¹⁰It is a fact which Sorenson has never denied that all calls made through both the VP-100 and the Dlink 1000 (i2eye) contact an LDAP server maintained by Sorenson no matter whether the call is a VRS call or a direct deaf to deaf call. What Sorenson does with the information obtained by those servers, it has not publicly stated.

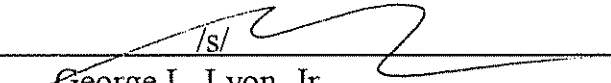
exempt from the rigors of Title II because it provides VRS pursuant to certification from the State of Utah. Unlike Sorenson, Hands On is content to be subject to prohibitions against discrimination and unreasonable practices. Section 225 is contained within Title II of the Act. VRS is not an information service. It is plainly a common carrier service. Sorenson disputes that the functional equivalency standard of Section 225 of the Act does not allow VRS providers to engage in unreasonable and discriminatory practices. Opposition at 10. Suffice it to say if functional equivalence means anything, it means that VRS users deserve similar protection from unreasonable and discriminatory practices. How Sorenson could possibly think or desire otherwise is beyond Hands On's understanding. The Commission should make clear that deaf and hard of hearing VRS users have the same rights to be free of unreasonable and discriminatory practices as do hearing individuals.

Hands On therefore renews its request to the Commission to clarify that the Sorenson intercept is in violation of the Declaratory Ruling. Now that the Declaratory Ruling is in full effect, the Commission should declare that Sorenson is ineligible to draw from the Interstate TRS Fund as long as it persists employing the intercept.

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Respectfully submitted,

HANDS ON VIDEO RELAY SERVICES, INC.

By  /s/
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Its Counsel

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August 25, 2006

DECLARATION UNDER PENALTY OF PERJURY

Philip Jacob, under penalty of perjury, deposes and states as follows:

My name is Philip Jacob. I am making this statement for submission to the Federal Communications Commission.

I am a regional outreach consultant for Hands On Video Relay Services, Inc. In that connection, I am familiar with the Sorenson VP-100 as many persons with whom I have dealt have the device. I also have a VP-100.

In connection with its reprogramming of the VP-100 to allow that device in certain circumstances to make calls through other providers' networks, I came to understand that Sorenson adds its address, "Sorenson VRS" to the speed dial for the VP-100 in the course of updating the device's firmware. In fact, it adds its address as the very first entry on the speed dial list.

When I first heard that Sorenson was going to add "Sorenson VRS" to the speed dial list, I decided to fill up the names to the 40 name maximum allowed by the VP-100. It was my intent to prevent Sorenson adding "Sorenson VRS" to my speed dial list before upgrading to the new firmware which supposedly would make the device interoperable.


When the new firmware update window popped up on my screen and I authorized it to proceed, it nevertheless added "Sorenson VRS" to my speed dial listing. It was 41st number on the list. It then refused to allow me to make any modifications to my speed dial list. It forced me to make two calls to Sorenson Technical Support where I had to wait over 45 minutes each call.

Before I called technical support, I wasn't able to pick any names found on the list to call out. The Sorenson support team was able to send a coded message to my VP-100 and had me reboot my VP-100. The screen popped up saying that I had to "upgrade" -- I had no control to reject or accept -- just pressed "OK" and it forced my VP-100 to download an older version which allowed me to modify the speed dial listing by deleting one or two names to go under 40 names.

The support team called me to verify that I did my part, then he sent the coded message to my VP-100 which, then, popped up saying that it was time for the firmware upgrade. It upgraded and finally allowed me to make any calls that I found on the list. Sorenson VRS remained the first speed dial listing and cannot be deleted.

In addition, I have discovered the following with respect to the pop screen asking for clicking on "Yes" or "No" to call other VRS providers. One customer had problems with remote control and clicked for "don't ask me again," and "No." That wasn't intentional on his part as he was trying to say "Yes." Now, he is not able to make any non-Sorenson VRS calls. At that time Sorenson technical support told the customer that they do not know how to solve this issue. I believe Sorenson may have a fix for that problem now.

The above information is true and correct to the best of my knowledge, information and belief.



Philip Jacob

August 25, 2006

CERTIFICATE OF SERVICE

I, George L. Lyon, Jr., do hereby certify that I have caused copies of the foregoing Opposition to Waiver Request to be served on the following persons via email on August 25, 2006:

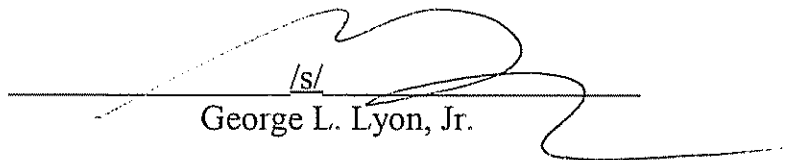
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